



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0504; FRL-9202-01-R5]

Air Plan Approval; Wisconsin; Permit Streamline Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain changes to Wisconsin's State Implementation Plan (SIP). These changes include defining and removing terms, creating a more streamlined process for permit applications and reports submitted electronically, and clarifying rules to create a more efficient permit issuance process. Approving this revision also makes Wisconsin rules consistent with Federal rules.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0504 at <http://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Susan Kraj, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-2654, kraj.susan@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Wisconsin's Submittal.
- II. Review of the Submittal.
- III. What Action is EPA Taking?
- IV. Incorporation by Reference.

V. Statutory and Executive Order Reviews.

I. Wisconsin's Submittal.

Wisconsin submitted this SIP revision request on April 6, 2021, and supplemental information on June 22, 2021, and July 27, 2021. This submittal includes revisions to the definitions in Chapter NR 400, to the minor construction permit program in Chapter NR 406, and to the operating permit program in Chapter NR 407. Specifically, Wisconsin is requesting to repeal NR 406.03(1e)(a), (b), and (j), NR 406.04(1f)(c) and (Note), NR 407.02(6)(a)3.(Note), NR 407.11(1)(e) and (3)(c), and NR 407.12(1)(b)(Note) and (e); to amend NR 400.02(130), (136m)(intro.) and (b), NR 406.02(6), NR 406.03(1e)(intro.), (c), (1m)(a), (b), (2)(b)2.c. and (g), NR 406.04(1)(i)(intro.), 2, 3, 4, (m)(intro.), (zg)1, (1k)(intro.), (1q)(f), (g), (2)(h), (4)(a)5, (b)(title), (b), (h)2, (j)2, and (7), NR 406.17(3)(d), NR 407.02(9), NR 407.03(1)(intro.), (1m)(a)2, (c)1, (2)(f) and (g), NR 407.05(2) and (6), NR 407.105(3)(b), NR 407.11(1)(a), NR 407.14(1m)(d), and NR 407.15(5); and to create NR 400.02(136m)(b)(Note), (136r), (162)(a)61 and 62, NR 406.04(1)(a)4m, (bm), (1f)(f) and (4)(e)3, NR 407.03(1)(a)4m, (bm) and (2)(ba).

Wisconsin's Department of Natural Resources (WDNR) has requested administrative changes to its definitions in Section NR 400. The definitions of "reconstruction" and "restricted use RICE" have been amended, the definition for "RICE" was created, and two hazardous air pollutants (HAPS) have been included to be

consistent with the Federal definition for volatile organic compounds (VOC) .

WDNR also submitted changes to its minor source construction permitting program, NR 406. The definition of "permit revision" in NR 406.02(6), and definitions of "commence construction" and "commence modification" were amended to align with the Federal definitions. The list of activities in NR 406.03 (1e) was revised to remove language that is outdated. The requirements for application forms were also clarified.

The State amended NR 406.03(1m) to clarify the procedures for applying for a construction permit waiver. Additionally, the State amended the meaning of economic hardship to remove language restricting economic or financial hardship that could "preclude the project in its entirety."

Wisconsin created provisions NR 406.04(1)(a)4m and NR 407.03(1)(a)4m for external combustion sources that fire ultra-low sulfur diesel fuel oil to comply with 40 CFR 80.510. An exemption for the incineration of confiscated drugs by a government agency using certain equipment with specific parameters and limits was added at NR 406.04(1)(bm) and NR 407.03(1)(bm) .

Wisconsin amended the provisions in NR 406.04(1)(i) to clarify that research and testing exemptions may only be provided for temporary changes or temporary equipment. Wisconsin created NR 406.04(1f)(f) to require that an operation permit application shall be submitted prior to commencing

construction or modification even when no construction permit is required.

The State also amended the Plantwide Applicability Limit (PAL) provision at NR 406.04(1f)(f) clarifying that new or modified sources exempt from construction permitting under a PAL must be included in an operation permit application submitted prior to commencing construction or modification. Wisconsin is also clarifying in NR 406.04(1k) that the exemption for projects evaluated for significant net emissions increase can only be requested prior to commencing construction, and that this exemption is only available for the modification of an existing emission unit and not for the construction of a new emission unit.

Revisions to NR 406.04(4)(b) allow an exemption for emissions units that must meet new or revised VOC reasonably available control technology (RACT) rules to also apply to new or revised nitrogen oxides (NOx) RACT.

The State has also revised NR 406.04 to clarify that an increase in hours of operation does not constitute an exclusion from modification if the change is subject to certain Federal requirements, and to clarify that the emissions increase being referred to is the maximum theoretical emissions increase.

Revisions were made to NR 406.17(3) to clarify when sources are ineligible for coverage under a registration construction permit. Also a note referencing previous EPA guidance on determining when a source can become an area source referred to

as "once in always in" has been removed as this guidance is no longer applicable.¹

The definition of "synthetic minor source" in NR 407.02 has been amended to match the Federal policy and guidance on the types of actions and permit conditions necessary to establish a facility as a synthetic minor source.

The permit exemptions in NR 407.03(1m)(a)2 and (c)1, and NR 407.03(2)(f) and (g), are available if the facility is not subject to an emission limitation or emission standard under section 111 or 112, are amended to be consistent with the parallel exemptions in NR 406.

NR 407.03(2)(ba) is created to correct an error by including an exemption for particulate matter less than 10 microns not to exceed 3.4 pounds per hour to make the exemption in NR 407 consistent with that in NR 406.

NR 407.05(2) and (6) are amended to remove certain requirements relating to submitting multiple paper copies of application materials.

NR 407.105(3)(b) is amended to replace "standard or regulation" with "emission limitation or emission standard".

NR 407.11(1)(e) and (3)(c) under administrative permit revisions and NR 407.12(1)(b)(Note) and (e) under minor permit revision are repealed.

¹ Memorandum: Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act, William L. Wehrum, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency (January 25, 2018)

NR 407.14(1m)(d) is amended to clarify that correcting a typographical error must not substantively change the meaning of a permit condition.

NR 407.15 (5), failure to pay fees, is amended to add citations to Wisconsin statute s. 285.

II. Review of the Submittal.

A. Except for the revisions discussed below in Section II.B, Wisconsin's submittal includes administrative and non-substantive changes such as the removal of outdated language, clarifications of rule applicability and correction of errors, and changes to ensure conformance with Federal requirements. These revisions remove provisions that are obsolete, revise rule language for consistency, or clarify provisions which are already in effect as a matter of law in the State program. These changes are not substantive, do not affect emissions, and do not interfere with requirements of the Clean Air Act (CAA). Therefore, EPA is proposing to approve these revisions.

B. The following revisions in Wisconsin's submittal require further analysis: the creation of new exemptions from minor source air permitting and the revisions to exemptions from minor source air permitting. Specifically, EPA will review the following below: 1) the permit exemption for fuel burning installations combusting ultra-low sulfur diesel fuel, 2) the exemption for incineration of small quantities of confiscated drugs by a government agency, 3) the revision to allow temporary steam generating units to operate up to 24 hours simultaneously

with the units they are temporarily replacing during periods of startup and shutdown, and 4) the revision to State RACT. EPA is using the following criteria to review these changes for compliance with Federal requirements - 40 CFR part 51, subpart I - Review of New Sources and Modifications, and section 110(1) of the CAA.

40 CFR 51.160 requires that the SIP set forth legally enforceable procedures that enable the state or local agency to determine whether any construction or modification of a source will (1) cause a violation of the SIP or (2) interfere with attainment or maintenance of a national ambient air quality standard (NAAQS). Section 110(1) of the CAA provides that a revision to a SIP submitted by a state shall be only be adopted by the state after reasonable notice and public hearing, and the Administrator shall not approve a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter.

WDNR provided opportunities to comment on the proposed rule during a public comment period from March 5, 2019 through April 24, 2019, and at a public hearing held on April 17, 2019, in accordance with chapter 227 of the Wisconsin Statutes. Based on our review of the public process documentation included in the submittal, we find that the Wisconsin has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has

satisfied the procedural requirements for notice and a public hearing under CAA section 110(1).

For the provisions in 40 CFR 51.160, and section 110(1) of the CAA that require that the revisions may not cause a violation of the SIP or interfere with attainment or maintenance of a NAAQS, Wisconsin's submittal includes an analysis to demonstrate these requirements will be met. For the reasons discussed below, the new and revised exemptions in the submittal will not interfere with any SIP requirement or any applicable requirement concerning attainment.

Wisconsin provided an analysis for the following changes: the exemptions in NR 406.04(1)(a)4m and NR 407.03(1)(a)4m for external combustion sources that fire ultra-low sulfur diesel fuel oil; the exemptions in NR 406.04(1)(bm) and NR 407.03(1)(bm) for incinerators operated by a government agency that burn confiscated drugs and meet other requirements; the revisions to NR 406.04(1)(zg) to allow temporary steam generating units to operate at the same time as the permanent steam generation equipment it is replacing for up to 24 hours during startup or shutdown; and the revisions to NR 406.04(4)(b) to allow the exemption for emissions units that must meet new or revised VOC RACT rules, to also apply to new or revised NOx RACT rules.

For the exemptions in NR 406.04(1)(a)4m, and NR 407.03(1)(a)4m regarding ultra-low sulfur, Wisconsin provided in its analysis that this exemption increased the size of exempt

units from 10 million British thermal units per hour (MMBtu/hr) to 25 MMBtu/hr for external combustion furnaces firing ultra-low sulfur diesel fuel. Because of the reduction in sulfur content in ultra-low sulfur diesel fuel, emissions will not increase when the unit size is increased to 25 MMBtu/hr and emissions will remain below all existing SIP-approved exemption thresholds.

For the exemption in NR 406.04(1)(bm) and NR 407.03(1)(bm) for incinerators operated by government agencies to burn certain confiscated drugs, Wisconsin provided that this exemption follows Federal regulations that exclude incineration of confiscated drugs by law enforcement and border patrols from the applicable National Emission Standards for Hazardous Air Pollutants requirements (40 CFR 60.2887(p)). Wisconsin also provided emissions estimates (for maximum theoretical emissions) based on uncontrolled emission factors for medical waste incineration. The State deems these factors similar and appropriate because confiscated drugs are likely to be burned with plastic or foil packaging and possibly needles. Wisconsin's analysis also assumed the worst-case fuel for the emission calculations. Wisconsin's emission estimates demonstrate that combusting confiscated drugs under the parameters required by NR 406.04(1)(bm) and NR 407.03(1)(bm) will result in emissions that are less than the existing SIP-approved permit exemption thresholds in NR 406.04(2) and NR 407.03(2). In addition, the rules require the use of a

monitoring device that continuously measures and records the temperature of the secondary chamber of the incinerator to ensure a proper destruction efficiency.

For the revision to the exemption in NR 406.04(1)(zg) for temporary steam generating units, Wisconsin explained in its analysis that the current unrevised SIP-approved exemption limits these temporary units to operating a total of 3,200 hours during nine calendar months, and this limit is unchanged by the revision. Therefore, the maximum emissions will not increase. The exemption also continues to require that the NAAQS are protected at all times the temporary units are operating.

The revision to NR 406.04(4)(b) excludes from permit modifications changes needed for the source to assure compliance with any new or revised RACT requirements for NO_x. The revision adds NO_x to the existing exemption which was for VOC RACT. Before any new or revised NO_x RACT rules can be SIP-approved, there will need to be a demonstration under section 110(1) of the CAA for that submittal.

III. What Action is EPA Taking?

For the reasons set forth above, EPA is proposing to approve the requested revisions to Wisconsin's SIP as submitted on April 6, 2021. These revisions were included in the certified Board Order AM-24-12b and published in the Wisconsin Administrative Register #777B on September 28, 2020. Based on the information submitted by Wisconsin on April 6, 2021, June 22, 2021, and July 27, 2021, EPA has determined that Wisconsin's

submittal is approvable and there were no deficiencies found that would prevent EPA approval.

IV. Incorporation by Reference.

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Wisconsin Administrative Code rules NR 400, 406 and 407 as published in the Wisconsin Register #777B on September 28, 2020, effective October 1, 2020, discussed in section I of this preamble. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011); Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or

environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 24, 2021.

Debra Shore,
Regional Administrator, Region 5.

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